

SCOTT+SCOTT ATTORNEYS AT LAW LLP

John T. Jasnoch (281605)
jjasnoch@scott-scott.com
Joseph Pettigrew (236933)
jpettigrew@scott-scott.com
600 W. Broadway, Suite 3300
San Diego, CA 92101
Telephone: 619-233-4565
Facsimile: 619-233-0508

SCOTT+SCOTT ATTORNEYS AT LAW LLP

Thomas K. Boardman (276313)
tboardman@scott-scott.com
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: 212-223-6444
Facsimile: 212-223-6334

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANNEMARIE NEWBOLD, on Behalf
of Herself and All Others Similarly
Situating,

Plaintiff,

vs.

CLOSETS BY DESIGN, INC. and CBD
FRANCHISING, INC.,

Defendants.

No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Annemarie Newbold alleges the following based upon personal
2 knowledge as to herself and her own acts, and upon information and belief and
3 investigation by Plaintiff's counsel, which included, among other things, a review
4 of public documents, marketing materials, and announcements made by and/or
5 concerning Closets by Design, Inc. and CBD Franchising, Inc. (collectively,
6 "Closets by Design" or "Defendants") as to all other matters. Plaintiff believes
7 that substantial additional evidentiary support exists for the allegations set forth
8 herein and will be available after a reasonable opportunity for discovery.

9 INTRODUCTION

10 1. This action seeks to remedy the unfair, deceptive, and unlawful
11 business practices of Defendants with respect to the marketing, advertising, and
12 sales of merchandise and services offered by Defendants.

13 2. Defendants offer design and installation services of custom closets,
14 garage organizers, entertainment centers, and home office systems – all at
15 purportedly deep discounts off of the "regular" or "original" retail price.
16 Throughout the Class Period (defined below), Defendants misrepresented the
17 existence, nature, and amount of price discounts on merchandise and services
18 offered for sale by purporting to offer specific dollar or percentage discounts from
19 "regular" or "original" retail prices. These purported discounts are false and
20 misleading, however, because the "regular" or "original" prices advertised by
21 Defendants are fabricated or inflated, and do not represent the actual regular prices

1 for Defendants' merchandise and services. In fact, Defendants never sold the
2 merchandise or services at their "regular" or "original" prices in meaningful
3 amounts or for meaningful periods of time. Moreover, the advertised "regular" or
4 "original" prices for the affected merchandise were not the prevailing retail market
5 prices within three months immediately preceding the publication and
6 dissemination of the advertised former prices, as required by California law.

7 3. As a result of Defendants' false and misleading advertising and
8 marketing of supposedly discounted retail prices based on "regular" or "original"
9 prices, Plaintiff and members of the proposed Class have suffered injury in fact,
10 including economic damages, and have lost money or property. Specifically,
11 Plaintiff and members of the Class have purchased Defendants' merchandise and
12 services under the mistaken belief that these products were actually offered for sale
13 at a meaningful discount from Defendants' "regular" or "original" prices for those
14 services and merchandise. But for Defendants' false and misleading advertising
15 and marketing of their merchandise, Plaintiff and members of the Class would not
16 have purchased such merchandise.

17 4. Plaintiff brings claims on behalf of herself and the proposed Class for
18 unjust enrichment and violations of, among other statutes, the Consumers Legal
19 Remedies Act, Cal. Civ. Code §1750, *et seq.* ("CLRA"); the Unfair Competition
20 Law, Cal. Bus. & Prof. Code §17200, *et seq.* ("UCL"); and the California False
21 Advertising Law, Cal. Bus. & Prof. Code §17500, *et seq.* ("FAL"). Plaintiff seeks

1 to permanently enjoin Defendants from using false and misleading claims
2 regarding retail price comparisons or reductions in their marketing and advertising.
3 Further, Plaintiff seeks to obtain restitution and other appropriate relief in the
4 amount by which Defendants were unjustly enriched as a result of their sales of
5 merchandise offered at a false discount. Plaintiff also seeks damages as provided
6 for pursuant to the CLRA. Finally, Plaintiff seeks reasonable attorneys' fees
7 pursuant to Cal. Code Civ. Proc. §1021.5 as this lawsuit seeks the enforcement of
8 an important right affecting the public interest and satisfies the statutory
9 requirements for an award of attorneys' fees.

10 **PARTIES**

11 5. Plaintiff Annemarie Newbold is a citizen of Kentucky. During the
12 Class Period, Plaintiff purchased a closet organization system from Defendants at a
13 purported sale or discount price off of Defendants' "regular" or "original" prices.
14 Plaintiff relied on Defendants' deceptive advertising and marketing in deciding to
15 purchase the merchandise/services and suffered damages by Defendants' actions.
16 Were it not for Defendants' deceptive advertising and marketing, Plaintiff would
17 not have purchased the merchandise/services.

18 6. Defendant Closets by Design, Inc. ("CBD Inc.") is a California
19 company with its principal place of business located at 3860 Capitol Ave.,
20 Whittier, CA 90601. CBD Inc. is a subsidiary of Home Organizers, Inc., a
21 California company. CBD Inc. owns and operates the Closets by Design brand's

1 corporate-owned locations, and therefore, is an active participant in the deceptive
2 pricing scheme. CBD Inc. also owns and controls the website and landing pages,
3 as well as, the print advertising and coupons, where Defendants offered their
4 purported discounts off the represented regular and original retail prices.

5 7. Defendant CBD Franchising, Inc. ("CBDF") is a California company
6 with its principal place of business located at 13272 Garden Grove Boulevard,
7 Garden Grove, CA 92843. CBDF is also a subsidiary of Home Organizers, Inc.
8 CBDF is a franchisor that sells Closets by Design branded franchises to franchisees
9 located across the country. CBDF controls the uniform nationwide marketing and
10 advertising program utilized by both the corporate-owned and franchised locations.

11 **JURISDICTION AND VENUE**

12 8. This Court has jurisdiction over this action under the Class Action
13 Fairness Act, 28 U.S.C. §1332(d). The aggregated claims of the individual Class
14 members exceed the sum or value of \$5,000,000, exclusive of interests and costs;
15 there are more than 100 members of the putative Class (defined below); and this is
16 a class action in which there is minimal diversity because Plaintiff is a citizen of a
17 different state than Defendants CBD Inc. and CBDF.

18 9. This Court has personal jurisdiction over Defendants CBD Inc. and
19 CBDF because they are headquartered in California, systematically and
20 continuously conducted business in and throughout the State of California, and
21 intentionally avail themselves of the markets within California through the

1 promotion, sale, marketing, and distribution of their products. Moreover, their
2 wrongful conduct, as described herein, emanated from California and foreseeably
3 affects consumers in California.

4 10. Venue is proper in this District under 28 U.S.C. §1391(b)(2) because a
5 substantial part of the events or omissions giving rise to Plaintiff's claims occurred
6 in this District. Under 28 U.S.C. §§1391(c)(2) and (d), Defendants CBD Inc. and
7 CBDF are deemed to reside in this District and their wrongful conduct relating to
8 the alleged deceptive pricing scheme emanated and was directed from this District.
9 As such, venue is proper in this judicial district under 28 U.S.C. §1391(b)(2)
10 because Defendants conduct business in this District and a substantial part of the
11 acts or omissions giving rise to the claims set forth herein occurred in this District.

12 11. A venue affidavit pursuant to California Civil Code §1780(d) is
13 attached as Exhibit 1.

14 **FACTUAL ALLEGATIONS**

15 **A. Closets by Design's Business and Marketing of Its Products**

16 12. Closets by Design was founded in 1982. As of 2018, Closets by
17 Design owned or franchised 57 locations, including 3 company-owned locations,
18 47 U.S. franchised locations, and 7 non-U.S. franchised locations, and operated an
19 e-commerce website (www.closetsbydesign.com). Defendants offer design and
20 installation of custom closets, garage organizers, entertainment centers, and home
21 office systems. Closets by Design's website includes information about

1 Defendants' merchandise and services, and links to coupons for each of its
2 corporate-owned and franchised locations.

3 13. Closets by Design prominently, continuously, and uniformly offers
4 significant percentage and dollar "discounts" to consumers nationwide for its
5 merchandise and services.

6 14. Unfortunately, the "discounts" that Closets by Design presents to its
7 customers are illusory. Closets by Design offers its customers purported "savings"
8 that are based on false and inflated "regular" or "original" prices. There is no
9 "regular" or "original" price at which Closets by Design merchandise and services
10 are routinely, if ever, sold to customers by Closets by Design.

11 15. Closets by Design knew or should have known that its pricing scheme
12 was intended to convey false information to consumers, including Plaintiff, about
13 the merchandise and services, to cause consumers to purchase such merchandise
14 and services believing that they were obtaining them at a significant savings, below
15 their actual or regular prices.

16 16. Defendants' representations were likely to mislead reasonable
17 consumers into believing that Defendants' prices were significantly lower than the
18 prices regularly offered for those products by Defendants, or offered by other
19 merchants for similar products, and that consumers would enjoy significant savings
20 by purchasing those products from Defendants instead of from other merchants.

1 17. Defendants' false and/or misleading pricing representations made it
2 more likely that consumers would purchase particular products from Defendants.
3 Defendants' misleading claims of a huge discount (at least 40% or \$200 off) were
4 likely to deceive consumers who were not inclined to purchase the product at all to
5 buy it from Defendants because they were misled into believing that they were
6 getting the item at a true discount.

7 18. Plaintiff is informed and believes that the alleged "regular" or
8 "original" prices for Defendants' merchandise and services at all relevant times
9 throughout the Class Period were false prices and not true prices that Defendants
10 had previously employed for such items.

11 19. Since at least in or around July 2014, Defendants have engaged in a
12 brand-wide, pervasive and continuous campaign of falsely claiming that their
13 merchandise and services sold at a far higher price in order to induce Plaintiff and
14 all Class members to purchase merchandise at purportedly marked-down sale
15 prices.

16 20. Plaintiff is informed and believes that Defendants' scheme,
17 disseminated to consumers via print and internet advertising, is part of a concerted,
18 years-long, pervasive nationwide campaign and has been consistently implemented
19 across all of Defendants' merchandise at each of its locations and online.
20 Defendants' pricing scheme has been prominently displayed in coupons and other
21 similar offers, with express references to alleged "discounts" that have never

1 existed and/or do not, and/or did not then, currently reference the true prevailing
2 market retail prices for such merchandise.

3 **B. Applicable Price Discounting Laws**

4 21. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or
5 deceptive acts or practices in or affecting commerce.” (15 U.S.C. §45(a)(1).) The
6 FTCA specifically makes it “unlawful for any person, partnership, or corporation
7 to disseminate, or cause to be disseminated, any false advertisement.” (15 U.S.C.
8 §52(a).)

9 22. Under the FTCA, advertising must be truthful and non-deceptive,
10 advertisers such as Defendants must have evidence to back up their claims, and
11 advertisements cannot be unfair. An advertisement is deceptive, according to the
12 Federal Trade Commission (“FTC”), if it contains a misstatement or omits
13 information that is likely to mislead consumers acting reasonably under the
14 circumstances, and the statement or omitted information is material – that is,
15 important to a consumer’s decision to buy or use the product.

16 23. The FTC has issued regulations describing misleading discount price
17 comparison schemes such as those used by Defendants as deceptive:

18 One of the most commonly used forms of bargain advertising is
19 to offer a reduction from the advertiser’s own former price for
20 an article. If the former price is the actual, bona fide price at
21 which the article was offered to the public on a regular basis for

1 a reasonably substantial period of time, it provides a legitimate
2 basis for the advertising of a price comparison. Where the
3 former price is genuine, the bargain being advertised is a true
4 one. If, on the other hand, the former price being advertised is
5 not bona fide but fictitious – for example, where an artificial,
6 inflated price was established for the purpose of enabling the
7 subsequent offer of a large reduction – the “bargain” being
8 advertised is a false one; the purchaser is not receiving the
9 unusual value he expects. In such a case, the “reduced” price
10 is, in reality, probably just the seller’s regular price.

11 16 C.F.R. §233.1(a).

12 A former price is not necessarily fictitious merely because no
13 sales at the advertised price were made. The advertiser should
14 be especially careful, however, in such a case, that the price is
15 one at which the product was openly and actively offered for
16 sale, for a reasonably substantial period of time, in the recent,
17 regular course of his business, honestly and in good faith – and,
18 of course, not for the purpose of establishing a fictitious higher
19 price on which a deceptive comparison might be based. And
20 the advertiser should scrupulously avoid any implication that a
21 former price is a selling, not an asking price (for example, by

1 use of such language as, “Formerly sold at \$___”), unless
2 substantial sales at that price were actually made.

3 16 C.F.R. §233.1(b).

4 *If the former price is set forth in the advertisement, whether*
5 *accompanied or not by descriptive terminology such as*
6 *“Regularly,” “Usually,” “Formerly,” etc., the advertiser*
7 *should make certain that the former price is not a fictitious*
8 *one.*

9 16 C.F.R. §233.1(e). [Emphasis added.]

10 Another commonly used form of bargain advertising is to offer
11 goods at prices lower than those being charged by others for the
12 same merchandise in the advertiser’s trade area (the area in
13 which he does business). This may be done either on a
14 temporary or a permanent basis, but in either case the
15 advertised higher price must be based upon fact, and not be
16 fictitious or misleading. Whenever an advertiser represents that
17 he is selling below the prices being charged in his area for a
18 particular article, he should be reasonably certain that the higher
19 price he advertises does not appreciably exceed the price at
20 which substantial sales of the article are being made in the area
21 – that is, a sufficient number of sales so that a consumer would

1 consider a reduction from the price to represent a genuine
2 bargain or saving.

3 16 C.F.R. §233.2(a).

4 The practices covered in the provisions set forth above
5 represent the most frequently employed forms of bargain
6 advertising. However, there are many variations which appear
7 from time to time and which are, in the main, controlled by the
8 same general principles. For example, retailers should not
9 advertise a retail price as a “wholesale” price. They should not
10 represent that they are selling at “factory” prices when they are
11 not selling at the prices paid by those purchasing directly from
12 the manufacturer. They should not offer seconds or imperfect
13 or irregular merchandise at a reduced price without disclosing
14 that the higher comparative price refers to the price of the
15 merchandise if perfect. They should not offer an advance sale
16 under circumstances where they do not in good faith expect to
17 increase the price at a later date, or make a “limited” offer
18 which, in fact, is not limited. In all of these situations, as well
19 as in others too numerous to mention, advertisers should make
20 certain that the bargain offer is genuine and truthful. Doing so
21 will serve their own interest as well as that of the public.

1 16 C.F.R. §233.5.

2 24. Likewise, California law specifically forbids false or misleading price
3 comparison schemes:

4 For the purpose of this article the worth or value of anything
5 advertised is the prevailing market price, wholesale if the offer
6 is at wholesale, retail if the offer is at retail, at the time of
7 publication of such advertisement in the locality wherein the
8 advertisement is published.

9 No price shall be advertised as a former price of any advertised
10 thing, unless the alleged former price was the prevailing market
11 price as above defined within three months next immediately
12 preceding the publication of the advertisement or unless the
13 date when the alleged former price did prevail is clearly,
14 exactly and conspicuously stated in the advertisement.

15 Cal. Bus. & Prof. Code §17501.

16 The following unfair methods of competition and unfair or
17 deceptive acts or practices undertaken by any person in a
18 transaction intended to result or that results in the sale or lease
19 of goods or services to any consumer are unlawful: [...]
20 Making false or misleading statements of fact concerning
21 reasons for, existence of, or amounts of price reductions.

1 Cal. Civ. Code §1770(a)(13).

2 **C. Closets by Design Continuously and Uniformly Engages in Deceptive**
3 **Pricing**

4 25. Defendants maintain a uniform, centralized, tightly controlled
5 nationwide marketing program from their corporate headquarters in California,
6 which covers the advertising and marketing operations of both its company-owned
7 and franchised locations throughout the United States. This program is described
8 in detail in, and enforced by, the franchise agreement between Defendant CBDF
9 and franchisees. The purpose of the centralized marketing structure is to keep
10 strict control over Closets by Design's advertising program. According to the
11 Closets by Design website, which is owned and operated by Defendant CBD Inc.:
12 *"The corporate run, highly effective national advertising and marketing*
13 *programs generate leads and customer awareness."* [https:// franchise.closets](https://franchise.closetsbydesign.com/about-closets-by-design/)
14 [bydesign.com / about-closets-by-design/](https://franchise.closetsbydesign.com/about-closets-by-design/) (last visited January 14, 2019.).
[Emphasis added.]

15 26. According to the "Franchise Disclosure Document," which
16 summarizes the Franchise Agreement, as well as the Franchise Agreement itself,
17 Defendant CBDF operates a "National Promotion and Protection Fund," the fees
18 from which are used for the national promotion, enhancement and protection of the
19 Closets by Design system. Franchisees are required to contribute 2.25% of their
20 monthly gross revenues to this fund. Defendant CBD Inc.'s company-owned
21

1 locations, as well as franchisees, participate in the national advertising and
2 marketing scheme.

3 27. Defendants maintain near-complete control over nearly every aspect
4 of the national advertising scheme. For example, according to the Franchise
5 Disclosure Document and the Franchise Agreement:

6 *[CBD Franchising, Inc.] will determine the cost, form or*
7 *media, content, format, production and timing, including*
8 *regional or local concentration and seasonal exposure,*
9 *location and all other matters involving advertising, public*
10 *relations and promotional campaigns* (see section 10.04 of the
11 Franchise Agreement). We intend to use the following
12 advertising media: direct mail, print media and electronic media
13 where appropriate and cost effective. The media coverage may
14 be local, regional or national. We will be using in-house
15 advertising personnel, but we also intend to engage the services
16 of advertising and public relations firms to assist in our
17 advertising program.

18 * * *

19 You may develop advertising materials for your own use, at
20 your own cost. *But we must approve the advertising materials*
21 *in advance and in writing. You may not, without our prior*

1 *written consent, advertise in any medium we have not*
 2 *previously approved in writing or use any advertising outlet*
 3 *through which we maintain a system-wide advertising*
 4 *program (e.g. Val Pak, Money Mailer and other outlets we*
 5 *identify from time to time).*

6 * * *

7 *You may only use advertising which we have either furnished*
 8 *or approved in writing in advance.*

9 * * *

10 *We will direct all advertising programs with sole control over*
 11 *the creative concepts, materials and media used in the*
 12 *programs, and the placement and allocation of advertising.*

13 [Emphasis added.]

14 28. Defendants maintain a central e-commerce website for informational,
 15 marketing, and sales purposes: <http://www.closetsbydesign.com> (last visited Jan.
 16 14, 2019). Each landing page of this website indicates that Defendant CBD Inc. is
 17 the owner of the copyright for the website. This website is used to communicate
 18 Closets by Design's advertising and marketing campaign to consumers nationwide.
 19 The website includes links to each of the stores' locations, as well as company-
 20 wide special offers. Currently, the homepage of the website offers 40% off plus
 21 free installation, plus an extra 15% off. Clicking on the "Get Started Now" and

“Find Out How” buttons takes you to a page with the same offer above a fillable contact form¹:



29. The sub-page for each Closets by Design location includes uniform links to “coupons for this location.” Throughout the Class Period, these coupons uniformly offered either (1) 40% off plus free installation; or (2) \$200 off plus free installation for each location, whether franchised or company-owned. For example, the following are the current coupons for the Atlanta, Georgia; Cincinnati, Ohio; Fresno, California; Louisville, Kentucky; Salt Lake City, Utah; Southern California; and Portland, Oregon, locations, respectively²:

¹ <https://www.closetsbydesign.com/> (last visited Jan. 14, 2019)

² <https://atlanta.closetsbydesign.com/laundry-pantry-and-more/coupons> (40% off) (last visited Jan. 14, 2019); <https://cincinnati.closetsbydesign.com/coupons> (40% off) (last visited Jan. 14, 2019); <https://fresno.closetsbydesign.com/coupons> (40% off) (last visited Jan. 14, 2019); <https://louisville.closetsbydesign.com/coupons> (40% off) (last visited Jan. 14, 2019); <https://saltlakecity.closetsbydesign.com/coupons> (\$200 off) (last visited Jan. 14, 2019); <https://southerncalifornia.closetsbydesign.com/coupons> (\$200 off); <https://portland.closetsbydesign.com/coupons> (\$200 off) (last visited Jan. 14, 2019).



30. The Closets by Design website has offered identical online “coupons” continuously during the Class Period. Beginning at least in or around July 2014, all locations offered uniform coupons for \$200 off plus free installation. Beginning in or around early 2016, certain locations began offering uniform coupons for 40% off plus free installation, while other locations maintained the \$200 off coupons. Since that time, each location has continued to offer one of these two purported discounts continuously.

31. Closets by Design likewise distributes identical coupons to consumers nationwide via direct mail advertising. These coupons indicate that Defendant CBD Inc. is the owner of the copyright for the coupon and the coupons provide a nationwide toll-free contact phone number for a consultation and estimate. These

coupons contain the same percentage and/or dollar “discount” offers that are offered on the Closets by Design website, with an occasional “extra” discount in addition to the uniform baseline 40% off or \$200 off offers:



D. Plaintiff’s Receipt of Purported Discount Offers and Purchases of Company Merchandise and Services

32. Plaintiff received, viewed, and relied on a direct mail advertising coupon, which was substantially identical to those described above, before buying Defendants’ merchandise.

1 33. In reliance on the purported discount offer, Plaintiff purchased
2 Defendants' merchandise and services for a closet organization system. According
3 to a quote dated February 12, 2015, and a contract dated April 23, 2015, Plaintiff
4 purchased an "Everyday Collection in White" system. The estimate listed a
5 "National List Price" of \$3,932.00, from which was deducted a 20% "Regional
6 Discount" and a "20% coupon discount," to give a total price of \$2,516.48, which
7 was further reduced to Plaintiff's purchase price of \$1,400. The \$3,932.00 national
8 list price was not the prevailing retail market price within three months
9 immediately preceding the publication and dissemination of the advertised
10 "discounted from" prices. Plaintiff was deceived into believing that Defendants'
11 price was based off of a genuine "regular" or "original" price.

12 34. As a result of Defendants' conduct detailed herein, Defendants
13 violated the aforementioned provisions of federal and state law.

14 **DAMAGES TO PLAINTIFF AND THE CLASS**

15 35. Plaintiff purchased merchandise from Defendants in reliance on
16 Defendants' pricing, advertising, and marketing that the merchandise represented
17 legitimate savings, as described above.

18 36. Plaintiff and the members of the Class would not have purchased the
19 merchandise from Closets by Design were it not for the purported "savings" off of
20 a "regular" or "original" price as advertised by Defendants.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action individually and on behalf of the following Class pursuant to Federal Rule of Procedure 23 (the “Class”):

All individuals residing in the United States who purchased Defendants’ merchandise and services advertised at a discount any time during the applicable limitations period (the “Class Period”).

38. Plaintiff reserves the right to redefine the Class prior to certification.

39. Excluded from the Class are Defendants, any of their parent companies, subsidiaries, and/or affiliates, their officers, directors, legal representatives, and employees, any co-conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over this matter.

40. This action is brought and may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity, typicality, adequacy, predominance, and superiority requirements of those provisions.

41. The Class is so numerous that the individual joinder of all of its members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes that the total number of Class members is in the thousands and that members of the Class are geographically dispersed across the United States. While the exact number and identities of the Class members are unknown at this

1 time, such information can be ascertained through appropriate investigation and
2 discovery.

3 42. Common questions of law and fact exist as to all members of the
4 Class, and these common questions predominate over any questions affecting only
5 individual members of the Class. These common legal and factual questions,
6 which do not vary from Class member to Class member, and which may be
7 determined without reference to the individual circumstances of any Class member
8 include, but are not limited to, the following:

9 a. whether Defendants violated provisions of the FTCA and
10 federal regulations through the pricing, advertising, and marketing of their
11 merchandise;

12 b. whether Defendants' pricing, advertising, and marketing of
13 their merchandise was false and misleading;

14 c. whether Defendants' conduct constitutes a violation of the
15 Consumers Legal Remedies Act (Cal. Civ. Code §1750, *et seq.*);

16 d. whether Defendants' conduct constitutes a violation of
17 California's false advertising law (Cal. Bus. & Prof. Code §17500, *et seq.*);

18 e. whether Defendants' conduct constitutes an unfair, unlawful,
19 and/or fraudulent business practice in violation of California's unfair
20 competition law (Cal. Bus. & Prof. Code §17200, *et seq.*);

1 f. whether Plaintiff and the Class are entitled to compensatory
2 damages, and if so, the nature of such damages;

3 g. whether Plaintiff and the Class are entitled to restitutionary
4 relief; and

5 h. whether Plaintiff and the Class are entitled to injunctive relief.

6 43. Plaintiff's claims are typical of the claims of the members of the
7 Class. Plaintiff and all members of the Class have been similarly affected by
8 Defendants' common course of conduct since they all relied on Defendants'
9 representations concerning their merchandise and purchased one or more items
10 based on those representations.

11 44. Plaintiff will fairly and adequately represent and protect the interests
12 of the Class. Plaintiff has retained counsel with substantial experience in handling
13 complex class action litigation. Plaintiff and her counsel are committed to
14 vigorously prosecuting this action on behalf of the Class and have the financial
15 resources to do so.

16 45. A class action is superior to other available methods for the fair and
17 efficient adjudication of the present controversy. Individual joinder of all members
18 of the Class is impracticable. Even if individual members of the Class had the
19 resources to pursue individual litigation, it would be unduly burdensome to the
20 courts in which the individual litigation would proceed. Individual litigation
21 magnifies the delay and expense to all parties in the court system of resolving the

1 controversies engendered by Defendants' common course of conduct. The class
2 action device allows a single court to provide the benefits of unitary adjudication,
3 judicial economy, and the fair and efficient handling of all Class members' claims
4 in a single forum. The conduct of this action as a class action conserves the
5 resources of the parties and of the judicial system and protects the rights of the
6 Class. Furthermore, for many, if not most, a class action is the only feasible
7 mechanism that allows an opportunity for legal redress and justice.

8 46. This action is maintainable as a class action under Federal Rule of
9 Civil Procedure 23(b)(1) because individual actions by Class members would
10 create: (1) inconsistent or varying adjudications that would establish incompatible
11 standards of conduct for Defendants; and/or (2) adjudications that, as a practical
12 matter, would be dispositive of the interests of other Class members not parties to
13 the adjudications, and would substantially impair or impede the ability of such
14 non-party Class members to protect their interests.

15 47. This action is maintainable as a class action under Federal Rule of
16 Civil Procedure 23(b)(2) because Defendants have acted or refused to act on
17 grounds generally applicable to the Class, thereby making appropriate final
18 injunctive relief respecting the Class as a whole.

19 48. This action is maintainable as a class action under Federal Rule of
20 Civil Procedure 23(b)(3) because the common questions of law and fact identified
21 above, without limitation, predominate over any questions affecting only

1 individual members, and a class action is superior to other available methods for
2 the fair and efficient adjudication of this controversy.

3 **TOLLING OF THE STATUTES OF LIMITATION**

4 **Fraudulent Concealment**

5 49. Upon information and belief, Defendants have known that the
6 purported discounts offered to consumers nationwide are fabricated or inflated, and
7 do not represent the actual regular prices for Defendants' merchandise and
8 services. Likewise, Defendants have known that they never sold merchandise or
9 services at any "regular" or "original" price in meaningful amounts or for
10 meaningful periods of time. Defendants have concealed from or failed to notify
11 Plaintiff, Class members, and the public of the full and complete nature of their
12 misleading advertising scheme.

13 50. Any applicable statute of limitation has therefore been tolled by
14 Defendants' knowledge, active concealment, and denial of the facts alleged herein,
15 of which behavior is ongoing.

16 **Discovery Rule**

17 51. The causes of action alleged herein did not accrue until Plaintiff and
18 Class members discovered those causes of action.

19 52. Plaintiff and Class members had no realistic ability to discern that
20 Defendants were using deceptive and misleading advertising and marketing
21 schemes to sell their merchandise and services. Because of Defendants' active

1 concealment of the true nature of the scheme, Plaintiff and Class members had no
2 reason to know that the significant discounts presented to them were entirely
3 illusory.

4 53. Plaintiff did not suspect that the discount offer she received was part
5 of a systematic, uniform, years-long scheme to mislead and deceive the consuming
6 public until years later, when she continued to routinely receive coupons touting
7 the same discount that she had received years earlier. Even then, it was not until
8 the investigation of counsel confirmed the existence and scope of the scheme that
9 Plaintiff was reasonably able to discover the causes of action alleged herein.

10 **Continuing Violation Doctrine**

11 54. Defendants' continuous and consistent advertising program
12 constitutes a series of wrongs or injuries. Each republication of false and
13 misleading purported discounts is a renewal of the wrong and injury. Defendants
14 continue to publish the false discounts to this day. As a result, the limitations
15 period continues to accrue.

16 **Equitable Tolling**

17 55. Equitable tolling suspends or extends the statute of limitations when a
18 plaintiff has reasonably and in good faith chosen to pursue one among several
19 remedies and the statute of limitations' notice function has been served.

20 56. Defendants have been on notice of Plaintiff's CLRA claims since
21 receipt of her pre-suit demand letters, which are required under the statute before

1 bringing a claim for damages. The statute of limitations function has thus been
2 served and has been tolled.

3 **CAUSES OF ACTION**

4 **FIRST CLAIM FOR RELIEF**
5 **(Unjust Enrichment on Behalf of the Class)**
6 **(Against All Defendants)**

7 57. Plaintiff realleges each and every allegation contained above as if
8 fully set forth herein and, to the extent necessary, pleads this cause of action in the
9 alternative.

10 58. Plaintiff brings this claim individually and on behalf of members of
11 the Class. In all states, the focus of an unjust enrichment claim is whether the
12 defendant was unjustly enriched. At the core of each state's law are two
13 fundamental elements – the defendant received a benefit from the plaintiff and it
14 would be inequitable for the defendant to retain that benefit without compensating
15 the plaintiff. The focus of the inquiry is the same in each state.

16 59. At all times relevant hereto, Defendants deceptively priced, marketed,
17 advertised, and sold merchandise to Plaintiff and the Class.

18 60. Plaintiff and members of the Class conferred upon Defendants non-
19 gratuitous payments for merchandise that they would not have if not for
20 Defendants' deceptive pricing, advertising, and marketing. Defendants accepted or
21 retained the non-gratuitous benefits conferred by Plaintiff and members of the
Class, with full knowledge and awareness that, as a result of Defendants'

1 deception, Plaintiff and members of the Class were not receiving a product of the
2 quality, nature, fitness, or value that had been represented by Defendants and
3 reasonable consumers would have expected.

4 61. Defendants have been unjustly enriched in retaining the revenues
5 derived from purchases of merchandise by Plaintiff and members of the Class,
6 which retention under these circumstances is unjust and inequitable because
7 Defendants misrepresented, among other things, that their merchandise was being
8 offered at a significant discount, which caused injuries to Plaintiff and members of
9 the Class because they paid for, and/or paid a price premium due to the misleading
10 pricing and advertising.

11 62. Retaining the non-gratuitous benefits conferred upon Defendants by
12 Plaintiff and members of the Class under these circumstances made Defendants'
13 retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendants
14 must pay restitution to Plaintiff and members of the Class for unjust enrichment, as
15 ordered by the Court.

16 **SECOND CLAIM FOR RELIEF**
17 **(Violations of California Business & Professions Code §17200 *et seq.*,**
18 **Based on Fraudulent Acts and Practices on Behalf of the Class)**
19 **(Against All Defendants)**

20 63. Plaintiff realleges each and every allegation contained above as if
21 fully set forth herein and, to the extent necessary, pleads this cause of action in the
alternative.

1 64. Plaintiff brings this claim individually, and on behalf of members of
2 the Class.

3 65. Under California Business & Professions Code §17200, any business
4 act or practice that is likely to deceive members of the public constitutes a
5 fraudulent business act or practice.

6 66. Defendants have engaged, and continue to engage, in conduct that is
7 likely to deceive members of the public. This conduct includes, but is not limited
8 to, misrepresenting that their merchandise is, among other things, being offered at
9 a significant discount.

10 67. After reviewing the pricing and advertising for Defendants'
11 merchandise, Plaintiff purchased merchandise in reliance on Defendants'
12 representations that their merchandise is, among other things, being offered at a
13 significant discount. Plaintiff would not have purchased Closets by Design
14 merchandise at all but for Defendants' false promotion of their merchandise as,
15 among other things, being offered at a significant discount. Plaintiff and the Class
16 have all paid money for Closets by Design merchandise. Accordingly, Plaintiff
17 and the Class have suffered injury in fact and lost money or property as a direct
18 result of Defendants' misrepresentations and material omissions.

19 68. By committing the acts alleged above, Defendants have engaged in
20 fraudulent business acts and practices, which constitute unfair competition within
21 the meaning of California Business & Professions Code §17200.

69. In accordance with California Business & Professions Code §17203, Plaintiff seeks an order: (1) enjoining Defendants from continuing to conduct business through their fraudulent conduct; and (2) requiring Defendants to conduct a corrective advertising campaign.

70. As a result of Defendants' conduct, Plaintiff seeks injunctive and restitutionary relief under California Business & Professions Code §17203.

THIRD CLAIM FOR RELIEF
**(Violations of California Business & Professions Code §17200, *et seq.*,
Based on Commission of Unlawful Acts on Behalf of the Class)
(Against All Defendants)**

71. Plaintiff realleges each and every allegation contained above as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

72. Plaintiff brings this claim individually, and on behalf of members of the Class.

73. The violation of any law constitutes an unlawful business practice under California Business & Professions Code §17200.

74. Defendants have violated §17200's prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts, as set forth more fully herein, and violating California Civil Code §§1572, 1573, 1709, 1710, 1711, 1770, California Business & Professions Code §17200 *et seq.*, the FTCA, 15 U.S.C. §45(a)(1) and 52(a),

1 California Business and Professions Code §17501, similar consumer protection
2 statute nationwide, and by violating the common law.

3 75. By violating these laws, Defendants have engaged in unlawful
4 business acts and practices which constitute unfair competition within the meaning
5 of California Business & Professions Code §17200.

6 76. Plaintiff purchased Closets by Design merchandise in reliance on
7 Defendants' representations that their merchandise was, among other things, being
8 offered at a significant discount. Plaintiff would not have purchased the
9 merchandise at all but for Defendants' false promotion that their merchandise was,
10 among other things, being offered at a significant discount. Plaintiff and the Class
11 have all paid money for Closets by Design merchandise. Accordingly, Plaintiff
12 and the Class have suffered injury in fact and lost money or property as a direct
13 result of Defendants' misrepresentations and material omissions.

14 77. In accordance with California Business & Professions Code §17203,
15 Plaintiff seeks an order: (1) enjoining Defendants from continuing to conduct
16 business through their fraudulent conduct; and (2) requiring Defendants to conduct
17 a corrective advertising campaign.

18 78. As a result of Defendants' conduct, Plaintiff seeks injunctive and
19 restitutionary relief under California Business & Professions Code §17203.
20
21

FOURTH CLAIM FOR RELIEF

**(Violations of California Business & Professions Code §17200, *et seq.*,
on Behalf of the Class – Unfair Acts and Practices)
(Against All Defendants)**

79. Plaintiff realleges each and every allegation contained above as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

80. Plaintiff brings this claim individually, and on behalf of members of the Class.

81. Under California Business & Professions Code §17200, any business act or practice that is unethical, oppressive, unscrupulous, and/or substantially injurious to consumers, or that violates a legislatively declared policy, constitutes an unfair business act or practice.

82. Defendants have engaged, and continue to engage, in conduct which is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers. This conduct includes representing that their merchandise is, among other things, being offered at a significant discount when, in fact, it is not.

83. Defendants have engaged, and continue to engage, in conduct that violates the legislatively declared policies of: (1) California Civil Code §§1572, 1573, 1709, 1710, 1711 against committing fraud and deceit; (2) California Civil Code §1770 against committing acts and practices intended to deceive consumers regarding the representation of goods in certain particulars; (3) the FTCA, 15

1 U.S.C. §§45(a)(1) and 52(a) against unfair or deceptive practices and false
2 advertising; (4) California Business & Professions Code §17501 against false
3 advertising; and (5) similar consumer protection statutes nationwide. Defendants
4 gain an unfair advantage over their competitors, whose labeling, advertising, and
5 marketing for other similar products must comply with these laws.

6 84. Defendants' conduct, including misrepresenting the pricing of their
7 merchandise, is substantially injurious to consumers. Such conduct has caused,
8 and continues to cause, substantial injury to consumers because consumers would
9 not have purchased their merchandise at all but for Defendants' false promotion of
10 their merchandise as, among other things, being offered at a significant discount.
11 Consumers have thus overpaid for Closets by Design merchandise. Such injury is
12 not outweighed by any countervailing benefits to consumers or competition.
13 Indeed, no benefit to consumers or competition results from Defendants' conduct.
14 Since consumers reasonably rely on Defendants' representations of their
15 merchandise and injury results from ordinary use of their merchandise, consumers
16 could not have reasonably avoided such injury. *Davis v. Ford Motor Credit Co.*
17 *LLC*, 179 Cal. App. 4th 581, 597-98 (2009); *see also Drum v. San Fernando Valley*
18 *Bar Assn.*, 182 Cal. App. 4th 247, 257 (2010) (outlining the third test based on the
19 definition of "unfair" in Section 5 of the FTC Act).

1 85. By committing the acts alleged above, Defendants have engaged in
2 unfair business acts and practices which constitute unfair competition within the
3 meaning of California Business & Professions Code §17200.

4 86. Plaintiff purchased Closets by Design merchandise in reliance on
5 Defendants' representations that their merchandise is, among other things, being
6 offered at a significant discount. Plaintiff would not have purchased her
7 merchandise at all but for Defendants' false promotion that their merchandise is,
8 among other things, being offered at a significant discount. Plaintiff and the Class
9 have all paid money for Closets by Design merchandise. Accordingly, Plaintiff
10 and the Class have suffered injury in fact and lost money or property as a direct
11 result of Defendants' misrepresentations and material omissions.

12 87. In accordance with California Business & Professions Code §17203,
13 Plaintiff seeks an order enjoining Defendants from continuing to conduct business
14 through their fraudulent conduct and further seeks an order requiring Defendants to
15 conduct a corrective advertising campaign.

16 88. As a result of Defendants' conduct, Plaintiff seeks injunctive and
17 restitutionary relief under California Business & Professions Code §17203.

18
19
20
21

FIFTH CLAIM FOR RELIEF
(Violations of the CLRA on Behalf of the Class
for Injunctive Relief and Damages)
(Against All Defendants)

89. Plaintiff realleges each and every allegation contained above as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

90. Plaintiff brings this claim individually, and on behalf of members of the Class.

91. Plaintiff purchased Closets by Design merchandise for her own personal use.

92. The acts and practices of Defendants as described above were intended to deceive Plaintiff and members of the Class as described herein, and have resulted, and will result in, damages to Plaintiff and members of the Class. These actions violated and continue to violate the CLRA in at least the following respects:

a. In violation of §1770(a)(5) of the CLRA, Defendants' acts and practices constitute representations that their merchandise has characteristics, uses, and/or benefits, which it does not;

b. In violation of §1770(a)(9) of the CLRA, Defendants' acts and practices constitute the advertisement of the goods in question without the intent to sell them as advertised; and

1 c. In violation of §1770(a)(13) of the CLRA, Defendants' acts and
2 practices constitute false or misleading statements of fact concerning reasons
3 for, existence of, or amounts of price reductions.

4 93. By committing the acts alleged above, Defendants have violated the
5 CLRA.

6 94. Plaintiff and Class members suffered injuries caused by Defendants'
7 misrepresentations because: (a) they were induced to purchase a product they
8 would not have otherwise purchased if they had known that Closets by Design
9 merchandise was not, among other things, being offered at a significant discount;
10 and/or (b) they paid a price premium due to the false and misleading pricing,
11 advertising, and marketing of Closets by Design merchandise.

12 95. Plaintiff and Class members are entitled to, pursuant to California
13 Civil Code §1780, an order enjoining the above-described wrongful acts and
14 practices of Defendants, the payment of costs and attorneys' fees, and any other
15 relief deemed appropriate and proper by the Court under California Civil Code
16 §1780.

17 96. Plaintiff requests that this Court enter such orders or judgments as
18 may be necessary to restore any person in interest any money which may have
19 been acquired by means of such unfair business practices, and for such relief as
20 provided in California Civil Code §1780 and the Prayer for Relief.

1 97. Pursuant to California Civil Code §1782, Plaintiff gave Closets by
2 Design, Inc. and CBD Franchising, Inc. notice by separate letters dated March 14,
3 2018, sent by certified mail, of the particular violations of California Civil Code
4 §1770. The notices requested that Defendants rectify the problems associated with
5 the actions alleged in this Complaint, and give notice to all affected consumers of
6 their intent to so act. Defendants have not yet responded to these notices.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as
9 follows:

10 A. That the Court certify the Class under Rule 23 of the Federal Rules of
11 Civil Procedure and appoint Plaintiff as Class Representative and her attorneys as
12 Class Counsel to represent the members of the Class;

13 B. That the Court declare that Defendants' conduct violates the statutes
14 referenced herein;

15 C. That the Court preliminarily and permanently enjoin Defendants from
16 conducting business through the unlawful, unfair, or fraudulent business acts or
17 practices, untrue and misleading labeling and marketing, and other violations of
18 law described in this Complaint;

19 D. That the Court order Defendants to conduct a corrective advertising
20 and information campaign advising consumers that their merchandise does not
21 have the characteristics, uses, benefits, and quality Defendants have claimed;

1 E. That the Court order Defendants to implement whatever measures are
2 necessary to remedy the unlawful, unfair, or fraudulent business acts or practices,
3 untrue and misleading advertising, and other violations of law described in this
4 Complaint;

5 F. That the Court order Defendants to notify each and every individual
6 and/or business who purchased their merchandise of the pendency of the claims in
7 this action in order to give such individuals and businesses an opportunity to obtain
8 restitution from Defendants;

9 G. That the Court order Defendants to pay restitution to restore to all
10 affected persons all funds acquired by means of any act or practice declared by this
11 Court to be an unlawful, unfair, or a fraudulent business act or practice, untrue or
12 misleading labeling, advertising, and marketing, plus pre- and post-judgment
13 interest thereon;

14 H. That the Court order Defendants to disgorge all monies wrongfully
15 obtained and all revenues and profits derived by Defendants as a result of their acts
16 or practices as alleged in this Complaint;

17 I. That the Court award damages to Plaintiff and the Class;

18 J. That the Court enter an Order awarding costs, expenses, and
19 reasonable attorneys' fees; and

20 K. That the Court grant such other and further relief as may be just and
21 proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

DATED: January 14, 2019

**SCOTT+SCOTT
ATTORNEYS AT LAW LLP**

s/ John T. Jasnoch

John T. Jasnoch (281605)

jjasnoch@scott-scott.com

Joseph A. Pettigrew (236933)

jpettigrew@scott-scott.com

600 W. Broadway, Suite 3300

San Diego, CA 92101

Telephone: 619-233-4565

Facsimile: 619-233-0508

**SCOTT+SCOTT
ATTORNEYS AT LAW LLP**

Thomas K. Boardman (276313)

tboardman@scott-scott.com

The Helmsley Building

230 Park Avenue, 17th Floor

New York NY 10169

Telephone: 212-223-6444

Facsimile: 212-223-6334

Counsel for Plaintiff Annemarie Newbold